

AMENDED IN SENATE SEPTEMBER 9, 2011

AMENDED IN SENATE SEPTEMBER 8, 2011

AMENDED IN SENATE SEPTEMBER 2, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 1391**

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**Introduced by Assembly Member Bradford  
(Principal coauthor: Assembly Member Smyth)**

February 23, 2011

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An act to amend Section 399.30 of the Public Utilities Code, relating to electricity.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1391, as amended, Bradford. Energy Commission: penalties.

Existing law creates the California renewables portfolio standard program (RPS program) and the Renewable Energy Resources Program to increase the amount of electricity generated per year from eligible renewable resources, as defined.

~~Existing law, effective on \_\_\_\_\_, requires~~ *Effective on the 91st day after the adjournment of the 2011–12 First Extraordinary Session*, the Energy Commission *is required* to refer a local publicly owned electric utility to the State Air Resources Board if the utility fails to comply with these programs and authorizes the state board to impose penalties.

This bill would delete these provisions and instead authorize the Energy Commission to impose certain civil penalties on a local publicly owned utility that fails to comply with these programs. The bill would require the Energy Commission to establish, by regulation, a prescribed penalty structure. The bill would subject any order imposing penalties to judicial review and enforcement.

Existing law requires the State Air Resources Board to deposit any penalties it collects to enforce these programs into the Air Pollution Control Fund.

This bill would delete this requirement and instead require the Energy Commission to deposit any civil penalties imposed on a local publicly owned utility in the Energy Resources Programs Account of the General Fund, to be available, upon appropriation, for the purposes of the program.

The bill would make conforming changes.

This bill would incorporate additional changes in Section 399.30 of the Public Utilities Code, proposed by SB 23, to be operative only if SB 23 and this bill are both chaptered and become effective January 1, 2012, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 399.30 of the Public Utilities Code, as  
2 added by Section 29 of Chapter 1 of the First Extraordinary Session  
3 of the Statutes of 2011, is amended to read:

4 399.30. (a) In order to fulfill unmet long-term generation  
5 resource needs, each local publicly owned electric utility shall  
6 adopt and implement a renewable energy resources procurement  
7 plan that requires the utility to procure a minimum quantity of  
8 electricity products from eligible renewable energy resources,  
9 including renewable energy credits, as a specified percentage of  
10 total kilowatthours sold to the utility's retail end-use customers,  
11 each compliance period, to achieve the targets of subdivision (c).

12 (b) The governing board shall implement procurement targets  
13 for a local publicly owned electric utility that require the utility to  
14 procure a minimum quantity of eligible renewable energy resources  
15 for each of the following compliance periods:

16 (1) January 1, 2011, to December 31, 2013, inclusive.

17 (2) January 1, 2014, to December 31, 2016, inclusive.

18 (3) January 1, 2017, to December 31, 2020, inclusive.

19 (c) The governing board of a local publicly owned electric utility  
20 shall ensure all of the following:

21 (1) The quantities of eligible renewable energy resources to be  
22 procured for the compliance period from January 1, 2011, to

1 December 31, 2013, inclusive, are equal to an average of 20 percent  
2 of retail sales.

3 (2) The quantities of eligible renewable energy resources to be  
4 procured for all other compliance periods reflect reasonable  
5 progress in each of the intervening years sufficient to ensure that  
6 the procurement of electricity products from eligible renewable  
7 energy resources achieves 25 percent of retail sales by December  
8 31, 2016, and 33 percent of retail sales by December 31, 2020.  
9 The local governing board shall require the local publicly owned  
10 utilities to procure not less than 33 percent of retail sales of  
11 electricity products from eligible renewable energy resources in  
12 all subsequent years.

13 (3) A local publicly owned electric utility shall adopt  
14 procurement requirements consistent with Section 399.16.

15 (d) The governing board of a local publicly owned electric utility  
16 may adopt the following measures:

17 (1) Rules permitting the utility to apply excess procurement in  
18 one compliance period to subsequent compliance periods in the  
19 same manner as allowed for retail sellers pursuant to Section  
20 399.13.

21 (2) Conditions that allow for delaying timely compliance  
22 consistent with subdivision (b) of Section 399.15.

23 (3) Cost limitations for procurement expenditures consistent  
24 with subdivision (c) of Section 399.15.

25 (e) The governing board of the local publicly owned electric  
26 utility shall adopt a program for the enforcement of this article on  
27 or before January 1, 2012. The program shall be adopted at a  
28 publicly noticed meeting offering all interested parties an  
29 opportunity to comment. Not less than 30 days' notice shall be  
30 given to the public of any meeting held for purposes of adopting  
31 the program. Not less than 10 days' notice shall be given to the  
32 public before any meeting is held to make a substantive change to  
33 the program.

34 (f) (1) Each local publicly owned electric utility shall annually  
35 post notice, in accordance with Chapter 9 (commencing with  
36 Section 54950) of Part 1 of Division 2 of Title 5 of the Government  
37 Code, whenever its governing body will deliberate in public on its  
38 renewable energy resources procurement plan.

39 (2) Contemporaneous with the posting of the notice of a public  
40 meeting to consider the renewable energy resources procurement

1 plan, the local publicly owned electric utility shall notify the  
2 Energy Commission of the date, time, and location of the meeting  
3 in order to enable the Energy Commission to post the information  
4 on its Internet Web site. This requirement is satisfied if the local  
5 publicly owned electric utility provides the uniform resource  
6 locator (URL) that links to this information.

7 (3) Upon distribution to its governing body of information  
8 related to its renewable energy resources procurement status and  
9 future plans, for its consideration at a noticed public meeting, the  
10 local publicly owned electric utility shall make that information  
11 available to the public and shall provide the Energy Commission  
12 with an electronic copy of the documents for posting on the Energy  
13 Commission's Internet Web site. This requirement is satisfied if  
14 the local publicly owned electric utility provides the uniform  
15 resource locator (URL) that links to the documents or information  
16 regarding other manners of access to the documents.

17 (g) A local publicly owned electric utility shall annually submit  
18 to the Energy Commission documentation regarding eligible  
19 renewable energy resources procurement contracts that it executed  
20 during the prior year, as follows:

21 (1) A description of the eligible renewable energy resource,  
22 including the duration of the contract or electricity purchase  
23 agreement.

24 (2) A description and identification of the electrical generating  
25 facility providing the eligible renewable energy resource under  
26 the contract.

27 (3) An estimate of the percentage increase in the utility's total  
28 retail sales of electricity from eligible renewable energy resources  
29 that will result from the contract.

30 (h) A public utility district that receives all of its electricity  
31 pursuant to a preference right adopted and authorized by the United  
32 States Congress pursuant to Section 4 of the Trinity River Division  
33 Act of August 12, 1955 (Public Law 84-386) shall be in compliance  
34 with the renewable energy procurement requirements of this article.

35 (i) For a local publicly owned electric utility that was in  
36 existence on or before January 1, 2009, that provides retail electric  
37 service to 15,000 or fewer customer accounts in California, and is  
38 interconnected to a balancing authority located outside this state  
39 but within the WECC, an eligible renewable energy resource  
40 includes a facility that is located outside California that is

1 connected to the WECC transmission system, if all of the following  
2 conditions are met:

3 (1) The electricity generated by the facility is procured by the  
4 local publicly owned electric utility, is delivered to the balancing  
5 authority area in which the local publicly owned electric utility is  
6 located, and is not used to fulfill renewable energy procurement  
7 requirements of other states.

8 (2) The local publicly owned electric utility participates in, and  
9 complies with, the accounting system administered by the Energy  
10 Commission pursuant to this article.

11 (3) The Energy Commission verifies that the electricity  
12 generated by the facility is eligible to meet the renewables portfolio  
13 standard procurement requirements.

14 (j) Notwithstanding subdivision (a), for a local publicly owned  
15 electric utility that is a joint powers authority of districts established  
16 pursuant to state law on or before January 1, 2005, that furnish  
17 electric services other than to residential customers, and is formed  
18 pursuant to the Irrigation District Law (Division 11 (commencing  
19 with Section 20500) of the Water Code), the percentage of total  
20 kilowatthours sold to the district's retail end-use customers, upon  
21 which the renewables portfolio standard procurement requirements  
22 in subdivision (b) are calculated, shall be based on the authority's  
23 average retail sales over the previous seven years. If the authority  
24 has not furnished electric service for seven years, then the  
25 calculation shall be based on average retail sales over the number  
26 of completed years during which the authority has provided electric  
27 service.

28 (k) A local publicly owned electric utility in a city and county  
29 that only receives greater than 67 percent of its electricity sources  
30 from hydroelectric generation located within the state that it owns  
31 and operates, and that does not meet the definition of a "renewable  
32 electrical generation facility" pursuant to Section 25741 of the  
33 Public Resources Code, shall be required to procure eligible  
34 renewable energy resources, including renewable energy credits,  
35 to meet only the electricity demands unsatisfied by its hydroelectric  
36 generation in any given year, in order to satisfy its renewable  
37 energy procurement requirements.

38 (l) Each local publicly owned electric utility shall report, on an  
39 annual basis, to its customers and to the Energy Commission, all  
40 of the following:

(1) Expenditures of public goods funds collected pursuant to Section 385 for eligible renewable energy resource development. Reports shall contain a description of programs, expenditures, and expected or actual results.

(2) The resource mix used to serve its customers by energy source.

(3) The utility's status in implementing a renewables portfolio standard pursuant to subdivision (a) and the utility's progress toward attaining the standard following implementation.

(m) A local publicly owned electric utility shall retain discretion over both of the following:

(1) The mix of eligible renewable energy resources procured by the utility and those additional generation resources procured by the utility for purposes of ensuring resource adequacy and reliability.

(2) The reasonable costs incurred by the utility for eligible renewable energy resources owned by the utility.

(n) On or before July 1, 2012, the Energy Commission shall adopt regulations specifying procedures for enforcement of this article. The regulations shall include a public process under which the Energy Commission may issue a notice of violation and correction against a local publicly owned electric utility for failure to comply with this article, and for the assessment of civil penalties pursuant to subdivision (o).

(o) (1) Upon a determination by the Energy Commission that a local publicly owned electric utility has failed to comply with this article, the Energy Commission may impose penalties to enforce this article, consistent with this section. Any penalty imposed upon a local publicly owned electric utility pursuant to this section shall parallel those adopted by the commission for noncompliance with the requirements of this article by a retail seller. The Energy Commission has exclusive authority to assess penalties upon a local publicly owned electric utility for a failure to comply with this article.

(2) A local publicly owned electric utility that violates any order, rule, or regulation of the Energy Commission issued or adopted pursuant to this article, may be assessed a civil penalty in accordance with the procedures described in Section 25534.1 of the Public Resources Code. In lieu of the penalty structure set forth in Section 25534 of the Public Resources Code, the Energy

Commission shall establish the penalty structure by regulation, which shall consider, in addition to other relevant factors, the penalty structure adopted by the commission for noncompliance by retail sellers.

(3) Any order of the Energy Commission that imposes penalties pursuant to this section shall be subject to judicial review and enforcement as specified in subdivisions (a) and (b) of Section 25534.2 of the Public Resources Code.

(4) Any civil penalties collected by the Energy Commission from a local publicly owned electric utility pursuant to this section shall be deposited in the Energy Resources Programs Account and, upon appropriation by the Legislature, shall be expended for the purposes of meeting the goals of this article. Those penalty revenues may be used by the Energy Commission for the administration of this article.

(p) The commission has no authority or jurisdiction to enforce any of the requirements of this article on a local publicly owned electric utility.

SEC. 1.5. Section 399.30 of the Public Utilities Code, as added by Section 29 of Chapter 1 of the First Extraordinary Session of the Statutes of 2011, is amended to read:

399.30. (a) In order to fulfill unmet long-term generation resource needs, each local publicly owned electric utility shall adopt and implement a renewable energy resources procurement plan that requires the utility to procure a minimum quantity of electricity products from eligible renewable energy resources, including renewable energy credits, as a specified percentage of total kilowatthours sold to the utility's retail end-use customers, each compliance period, to achieve the targets of subdivision (c).

(b) The governing board shall implement procurement targets for a local publicly owned electric utility that require the utility to procure a minimum quantity of eligible renewable energy resources for each of the following compliance periods:

(1) January 1, 2011, to December 31, 2013, inclusive.

(2) January 1, 2014, to December 31, 2016, inclusive.

(3) January 1, 2017, to December 31, 2020, inclusive.

(c) The governing board of a local publicly owned electric utility shall ensure all of the following:

(1) The quantities of eligible renewable energy resources to be procured for the compliance period from January 1, 2011, to

December 31, 2013, inclusive, are equal to an average of 20 percent of retail sales.

(2) The quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020. The local governing board shall require the local publicly owned utilities to procure not less than 33 percent of retail sales of electricity products from eligible renewable energy resources in all subsequent years.

(3) A local publicly owned electric utility shall adopt procurement requirements consistent with Section 399.16.

(d) The governing board of a local publicly owned electric utility may adopt the following measures:

~~(1) Rules permitting the utility to apply excess procurement of eligible renewable energy resources accumulated through December 31, 2010, or from one compliance period to subsequent compliance periods, in the same manner as allowed for retail sellers. Those rules shall ensure that excess procurement accumulated through December 31, 2010, is calculated based on annual eligible renewable energy resource procurement targets in effect since 2006, provided that the procurement targets, as amended, specified the achievement of not less than a 20 percent renewables portfolio standard by no later than December 31, 2010, and included increasing procurement targets for each intervening year in one compliance period to subsequent compliance periods in the same manner as allowed for retail sellers pursuant to Section 399.13.~~

(2) Conditions that allow for delaying timely compliance consistent with subdivision (b) of Section 399.15.

(3) Cost limitations for procurement expenditures consistent with subdivision (c) of Section 399.15.

(e) The governing board of the local publicly owned electric utility shall adopt a program for the enforcement of this article on or before January 1, 2013. The program shall be adopted at a publicly noticed meeting offering all interested parties an opportunity to comment. Not less than 30 days' notice shall be given to the public of any meeting held for purposes of adopting



1 the program. Not less than 10 days' notice shall be given to the  
2 public before any meeting is held to make a substantive change to  
3 the program.

4 (f) (1) Each local publicly owned electric utility shall annually  
5 post notice, in accordance with Chapter 9 (commencing with  
6 Section 54950) of Part 1 of Division 2 of Title 5 of the Government  
7 Code, whenever its governing body will deliberate in public on its  
8 renewable energy resources procurement plan.

9 (2) Contemporaneous with the posting of the notice of a public  
10 meeting to consider the renewable energy resources procurement  
11 plan, the local publicly owned electric utility shall notify the  
12 Energy Commission of the date, time, and location of the meeting  
13 in order to enable the Energy Commission to post the information  
14 on its Internet Web site. This requirement is satisfied if the local  
15 publicly owned electric utility provides the uniform resource  
16 locator (URL) that links to this information.

17 (3) Upon distribution to its governing body of information  
18 related to its renewable energy resources procurement status and  
19 future plans, for its consideration at a noticed public meeting, the  
20 local publicly owned electric utility shall make that information  
21 available to the public and shall provide the Energy Commission  
22 with an electronic copy of the documents for posting on the Energy  
23 Commission's Internet Web site. This requirement is satisfied if  
24 the local publicly owned electric utility provides the uniform  
25 resource locator (URL) that links to the documents or information  
26 regarding other manners of access to the documents.

27 (g) A local publicly owned electric utility shall annually submit  
28 to the Energy Commission documentation regarding eligible  
29 renewable energy resources procurement contracts that it executed  
30 during the prior year, as follows:

31 (1) A description of the eligible renewable energy resource,  
32 including the duration of the contract or electricity purchase  
33 agreement.

34 (2) A description and identification of the electrical generating  
35 facility providing the eligible renewable energy resource under  
36 the contract.

37 (3) An estimate of the percentage increase in the utility's total  
38 retail sales of electricity from eligible renewable energy resources  
39 that will result from the contract.

(h) A public utility district that receives all of its electricity pursuant to a preference right adopted and authorized by the United States Congress pursuant to Section 4 of the Trinity River Division Act of August 12, 1955 (Public Law 84-386) shall be in compliance with the renewable energy procurement requirements of this article.

(i) For a local publicly owned electric utility that was in existence on or before January 1, 2009, that provides retail electric service to 15,000 or fewer customer accounts in California, and is interconnected to a balancing authority located outside this state but within the WECC, an eligible renewable energy resource includes a facility that is located outside California that is connected to the WECC transmission system, if all of the following conditions are met:

(1) The electricity generated by the facility is procured by the local publicly owned electric utility, is delivered to the balancing authority area in which the local publicly owned electric utility is located, and is not used to fulfill renewable energy procurement requirements of other states.

(2) The local publicly owned electric utility participates in, and complies with, the accounting system administered by the Energy Commission pursuant to this article.

(3) The Energy Commission verifies that the electricity generated by the facility is eligible to meet the renewables portfolio standard procurement requirements.

(j) Notwithstanding subdivision (a), for a local publicly owned electric utility that is a joint powers authority of districts established pursuant to state law on or before January 1, 2005, that furnish electric services other than to residential customers, and is formed pursuant to the Irrigation District Law (Division 11 (commencing with Section 20500) of the Water Code), the percentage of total kilowatthours sold to the district's retail end-use customers, upon which the renewables portfolio standard procurement requirements in subdivision (b) are calculated, shall be based on the authority's average retail sales over the previous seven years. If the authority has not furnished electric service for seven years, then the calculation shall be based on average retail sales over the number of completed years during which the authority has provided electric service.

(k) A local publicly owned electric utility in a city and county that only receives greater than 67 percent of its electricity sources

1 from hydroelectric generation located within the state that it owns  
2 and operates, and that does not meet the definition of a “renewable  
3 electrical generation facility” pursuant to Section 25741 of the  
4 Public Resources Code, shall be required to procure eligible  
5 renewable energy resources, including renewable energy credits,  
6 to meet only the electricity demands unsatisfied by its hydroelectric  
7 generation in any given year, in order to satisfy its renewable  
8 energy procurement requirements.

9 (l) Each local publicly owned electric utility shall report, on an  
10 annual basis, to its customers and to the Energy Commission, all  
11 of the following:

12 (1) Expenditures of public goods funds collected pursuant to  
13 Section 385 for eligible renewable energy resource development.  
14 Reports shall contain a description of programs, expenditures, and  
15 expected or actual results.

16 (2) The resource mix used to serve its customers by energy  
17 source.

18 (3) The utility’s status in implementing a renewables portfolio  
19 standard pursuant to subdivision (a) and the utility’s progress  
20 toward attaining the standard following implementation, including  
21 information that demonstrates the conditions, if any, delaying the  
22 utility’s timely compliance with the renewables portfolio standard  
23 consistent with paragraph (5) of subdivision (b) of Section 399.15.

24 (m) A local publicly owned electric utility shall retain discretion  
25 over both of the following:

26 (1) The mix of eligible renewable energy resources procured  
27 by the utility and those additional generation resources procured  
28 by the utility for purposes of ensuring resource adequacy and  
29 reliability.

30 (2) The reasonable costs incurred by the utility for eligible  
31 renewable energy resources owned by the utility.

32 (n) On or before July 1, 2012, the Energy Commission shall  
33 adopt regulations specifying procedures for enforcement of this  
34 article. The regulations shall include a public process under which  
35 the Energy Commission may issue a notice of violation and  
36 correction against a local publicly owned electric utility for failure  
37 to comply with this article, and for the assessment of civil penalties  
38 pursuant to subdivision (o).

39 (o) (1) Upon a determination by the Energy Commission that  
40 a local publicly owned electric utility has failed to comply with

1 this article, the Energy Commission may impose penalties to  
2 enforce this article, consistent with this section. Any penalty  
3 imposed upon a local publicly owned electric utility pursuant to  
4 this section shall parallel those adopted by the commission for  
5 noncompliance with the requirements of this article by a retail  
6 seller. The Energy Commission has exclusive authority to assess  
7 penalties upon a local publicly owned electric utility for a failure  
8 to comply with this article.

9 (2) A local publicly owned electric utility that violates any order,  
10 rule, or regulation of the Energy Commission issued or adopted  
11 pursuant to this article, may be assessed a civil penalty in  
12 accordance with the procedures described in Section 25534.1 of  
13 the Public Resources Code. In lieu of the penalty structure set forth  
14 in Section 25534 of the Public Resources Code, the Energy  
15 Commission shall establish the penalty structure by regulation,  
16 which shall consider, in addition to other relevant factors, the  
17 penalty structure adopted by the commission for noncompliance  
18 by retail sellers.

19 (3) Any order of the Energy Commission that imposes penalties  
20 pursuant to this section shall be subject to judicial review and  
21 enforcement as specified in subdivisions (a) and (b) of Section  
22 25534.2 of the Public Resources Code.

23 (4) Any civil penalties collected by the Energy Commission  
24 from a local publicly owned electric utility pursuant to this section  
25 shall be deposited in the Energy Resources Programs Account and,  
26 upon appropriation by the Legislature, shall be expended for the  
27 purposes of meeting the goals of this article. Those penalty  
28 revenues may be used by the Energy Commission for the  
29 administration of this article.

30 (p) The commission has no authority or jurisdiction to enforce  
31 any of the requirements of this article on a local publicly owned  
32 electric utility.

33 SEC. 2. Section 1.5 of this bill incorporates amendments to  
34 Section 399.30 of the Public Utilities Code proposed by both this  
35 bill and Senate Bill 23. It shall only become operative if (1) both  
36 bills are enacted and become effective on or before January 1,  
37 2012, (2) each bill amends Section 399.30 of the Public Utilities

- 1 Code, and (3) this bill is enacted after Senate Bill 23, in which
- 2 case Section 1 of this bill shall not become operative.

O